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SIDENSE CORP.

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

SIDENSE CORP., a Canadian Corporation

Plaintiff,

v.

KILOPASS TECHNOLOGY INC., a
California Corporation, and CHARLIE
CHENG, an individual,

Defendants.

Case No. 3:11-CV-04112 SI

**SECOND AMENDED COMPLAINT FOR
DEFAMATION, UNFAIR
COMPETITION UNDER LANHAM ACT
§ 43(A), INTENTIONAL
INTERFERENCE WITH
CONTRACTUAL RELATIONS,
INTENTIONAL INTERFERENCE WITH
PROSPECTIVE ECONOMIC
ADVANTAGE, AND UNFAIR
COMPETITION UNDER BUS. & PROF.
CODE § 17200**

JURY TRIAL DEMANDED



1
2 Plaintiff Sidense Corp. (“SIDENSE”) brings this civil action against Kilopass Technology,
3 Inc. (“KILOPASS”) and Mr. Charlie Cheng (“CHENG”), and for its complaint alleges as follows:

4 **PARTIES**

5 1. SIDENSE is a Canadian Corporation with its principal place of business at 84
6 Hines Road, Suite 260, Ottawa, Ontario, Canada, K2K 3G3.

7 2. KILOPASS is a California Corporation with its principal place of business at 3333
8 Octavius Drive, Santa Clara, California 95054.

9 3. CHENG is the Chief Executive Officer of KILOPASS and, on information and
10 belief, is a citizen of the United States residing in the Northern District of California.

11 **JURISDICTION AND VENUE**

12 4. This Complaint involves a citizen of a foreign state and citizens of California.
13 SIDENSE is a Canadian Corporation. KILOPASS is a California corporation. On information and
14 belief, CHENG is a citizen and resident of California. The amount in controversy exceeds
15 \$75,000. Subject matter jurisdiction is, therefore, proper under 28 U.S.C. § 1332. Additionally, the
16 Court has subject matter jurisdiction over Sidense’s Lanham Act claim pursuant to 28 U.S.C. §
17 1331.

18 5. KILOPASS admits that personal jurisdiction and venue are appropriate in this
19 district through its Complaint filed in *Kilopass Technology, Inc. v. Sidense Corp.*, Case No. C 10-
20 02066 SI. Venue is further appropriate in this district because KILOPASS and CHENG are subject
21 to personal jurisdiction here, reside here, and have committed a substantial number of the alleged
22 acts described below here.

23 **INTRADISTRICT ASSIGNMENT**

24 6. This action should be, and has been, assigned to the San Francisco Division
25 because SIDENSE and KILOPASS are parties to *Kilopass Technology, Inc. v. Sidense Corp.*,
26 Case No. C 10-02066 SI currently pending in that Division, and CHENG is CEO of KILOPASS.
27
28



GENERAL ALLEGATIONS

7. SIDENSE, founded in 2004, has recently become increasingly recognized as the leading innovator in the emerging market for "1T" one-time programmable (OTP) embedded non-volatile memory (eNVM). SIDENSE's 1T-Fuse™ memory products provide the industry's smallest footprints, lowest power, fastest access times, highest densities, and highest reliability. SIDENSE licenses its technology to customers who then employ it in a variety of integrated circuits, which are then placed in a consumer electronics product such as a smartphone or set top box. The United States Patent and Trademark Office ("USPTO") granted SIDENSE United States Patent No. 7,402,855 (the "'855 patent") for the inventions embodied in the 1T-Fuse™ memory products.

8. With market demand moving from yesterday's larger and less efficient antifuse memory to SIDENSE's 1T-Fuse™ memory designs, and becoming increasingly unable to fairly compete with SIDENSE's technology on the merits, KILOPASS, a SIDENSE competitor, and CHENG, KILOPASS' CEO, embarked on a plan and scheme to (1) harass SIDENSE, its customers and potential customers, and (2) try to intimidate and frighten SIDENSE customers, potential customers, and others in the market away from doing business with SIDENSE.

9. In furtherance of this plan and scheme, KILOPASS and CHENG embarked upon a campaign of publishing false and misleading information in press releases and other advertisements to the general public including to customers and potential customers, to the customers and potential customers of customers, and to the officers, directors, employees and attorneys of customers, potential customers, and of customers' customers and potential customers' customers; in mass e-mail mailings to individuals including, on information and belief, the officers, directors, employees, and attorneys of customers, potential customers, and of customers' customers and potential customers; and in in-person communications to numerous individuals including, on information and belief, the officers, directors, employees, and attorneys of customers, potential customers, and of customers' customers and potential customers. On information and belief, KILOPASS and CHENG have embarked upon this campaign of false and misleading information to harass SIDENSE and its customers, to create fear, uncertainty, and

1 doubt concerning SIDENSE and its technology in the marketplace, to prevent SIDENSE's
2 customers and potential customers from doing business and/or continuing to do business with
3 SIDENSE, but instead to do business with KILOPASS, and to force SIDENSE to divert time,
4 money, and effort to counteract KILOPASS' and CHENG's misinformation campaign.

5 10. Pursuant to this campaign of false and misleading information, on May 22, 2008,
6 KILOPASS, with the knowledge and acquiescence of CHENG, told one company and, on
7 information and belief, KILOPASS, with the knowledge and acquiescence of CHENG, has told
8 other Sidense customers and/or potential customers that, based upon Kilopass' own "in silicon"
9 evaluation, Sidense's technology was not commercially viable, whereas Kilopass knew or should
10 have known that these representations were false. These statements were false since Kilopass had
11 never "in silicon," or otherwise, evaluated Sidense's 1T bit cell technology, and the tests Kilopass
12 was referring to were of its own 1T bit cell technology which Kilopass knew was materially
13 different from the Sidense 1T bit cell at least because it had a reverse wordline bitline architecture,
14 and had replaced one of the two electrically conductive doped semiconductor regions on either end
15 of the channel region with a non-conductive insulator, *i.e.* shallow trench isolation (STI). The
16 purpose and intent of this false information was to sell Kilopass technology.

17 11. Pursuant to this campaign of false and misleading information, with the knowledge
18 and acquiescence of KILOPASS and CHENG, in May 2009, KILOPASS' marketing director, Linh
19 Hong, published a "White Paper" entitled "Comparison of Embedded Non-Volatile Memory
20 Technologies and Their Applications," which included the statement "Kilopass was the first to
21 pioneer antifuse in a standard CMOS process with no additional processing steps. Kilopass holds
22 patents for several flavors of the cells, including the 1T and 2T," followed by two antifuse bit cell
23 illustrations labeled "Antifuse Bit Cell-2T" and "Antifuse Bit Cell-1T" implying that the bit cells
24 illustrated therein depicted "the [Kilopass] 1T and 2T" patented antifuse cells. However, the bit
25 cell illustration labeled "Antifuse Bit Cell-1T" actually depicted Sidense's 1T bit cell. Through
26 Hong, KILOPASS and CHENG knowingly used Sidense's image even though Hong and/or
27 Kilopass knew or should have known that Sidense's 1T bit cell is not shown or described
28 anywhere in Kilopass' patents. To persons familiar with the Sidense bit cell, this would have



1 suggested that the Sidense bit cell structure was specifically disclosed in the Kilopass 1T patents
2 and that, rather than having been independently developed, Sidense's bit cell was merely a copy of
3 the Kilopass bit cell. To such persons, this also would have suggested that Sidense would almost
4 certainly be found to have infringed upon the Kilopass 1T patents. The purpose and intent of this
5 false information was to sell Kilopass technology.

6 12. Pursuant to this campaign of false and misleading information, KILOPASS and
7 CHENG have prominently featured, and continue to feature, the following statement on its
8 website under the topic heading **"1 T Bitcell – A Split Channel Device"**:

9 Kilopass' 1T antifuse bit cell patent, issued in 2004, is a split channel device consisting of
10 a thin (core) gate and a thick (I/O) gate.

11 This statement is false, misleading and designed to make it appear that Sidense, which was
12 founded in 2004, entered into business to copy Kilopass' 1T technology, which is demonstrably
13 untrue. On May 6, 2004, SIDENSE's founder, Wlodek Kurjanowicz, filed a basic patent
14 application describing and claiming his "split channel" invention using thin "core" oxide and thick
15 "I/O" oxide in a gate structure, which ultimately issued as U.S. Pat No. 7,402,855. The earliest
16 Kilopass patent directed to thin/thick gate oxide of any type was Peng U.S. Pat. No. 6,940,751
17 which did not issue until September 6, 2005 (long after SIDENSE was founded and had filed its
18 basic split channel patent application), and did not teach the use of "core" and "I/O" oxide to make
19 a thin/thick oxide device, and did not teach or even mention a "split channel" device. KILOPASS'
20 knowingly false statements about its own patents were made in bad faith. Moreover, the USPTO
21 issued Mr. Kurjanowicz's '855 patent only after carefully considering Peng's '751 patent.

22 Additionally, Sidense has not licensed Kilopass, under Sidense's '855 patent, to sell or license
23 Sidense's patented 1T antifuse bit cell using thin (core) and thick (I/O) gate oxide to make a split
24 channel device. The purpose and intent of this false information was to sell Kilopass technology.

25 13. Pursuant to this campaign of false and misleading information, despite its failure to
26 invalidate even a single one of SIDENSE's '855 patent claims during reexamination, on at least
27 August 12, 2010, KILOPASS and CHENG sent an email from kilopass.team@kilopass.com to
28 Customer and, on information and belief, a substantial number of other of customers and potential



1 customers stating: “US Patent and Trademark Office (USPTO) Invalidates All Claims of
2 SIDENSE’s Key Patent (’855),” (emphasis added). The email lists Erika Duscha as Kilopass’
3 Marcom Manager and as the person to be contacted. This email included a press release regarding
4 Kilopass’ reexamination of the ’855 patent and implied that SIDENSE had been unable to
5 persuade the USPTO that SIDENSE’s technology was materially different from the KILOPASS
6 prior art patents, and that SIDENSE did not own the intellectual property rights which it had been
7 selling, and offering to sell, to customers and potential customers. In fact, the USPTO has never
8 invalidated any claims of the SIDENSE ’855 patent. Instead, on January 26, 2011, the USPTO
9 issued an “Action Closing Prosecution” of the ’855 patent reexamination, specifically confirming
10 the patentability of all original claims over the KILOPASS 1T prior art patents, and also
11 confirming the patentability of additional new claims that SIDENSE added during the *inter partes*
12 re-examination proceedings over the KILOPASS 1T prior art patents. KILOPASS and CHENG
13 are well aware that this assertion is false since KILOPASS has fully participated in the *inter partes*
14 re-examination proceedings. The purpose and intent of this false information was to sell Kilopass
15 technology.

16 14. Pursuant to this campaign of false and misleading information, on at least August 8,
17 2011, KILOPASS, through CHENG and others have stated to at least several customers and, on
18 information and belief, a substantial number of other Sidense customers and potential customers
19 that “SIDENSE continues to offer [its 1T intellectual property] for license . . . knowing [that a]
20 substantial portion of its [’855] patent claims have been rejected.” This statement is intended to
21 imply that SIDENSE lacks ownership of the intellectual property rights it has been selling and
22 offering to sell to its customers and potential customers. In fact, as stated above, in January 2011,
23 the USPTO issued an “Action Closing Prosecution” of the ’855 patent reexamination, specifically
24 confirming the patentability of all original claims over the KILOPASS 1T prior art patents, and
25 also confirming the patentability of additional new claims that SIDENSE had added during the
26 *inter partes* re-examination proceedings. KILOPASS and CHENG are well aware that this
27 assertion is false since KILOPASS has fully participated in the *inter partes* re-examination
28 proceedings. The purpose and intent of this false information was to sell Kilopass technology.



1 15. Pursuant to this campaign of false and misleading information, at least as early as
2 February 2011, KILOPASS and CHENG began publishing statements falsely indicating that
3 SIDENSE's *inter partes* re-examination proceedings in the USPTO regarding KILOPASS' United
4 States Patent No. 6,940,751 ('751) had been concluded in KILOPASS' favor, thereby foreclosing
5 SIDENSE from challenging the validity of that patent in defense of KILOPASS' patent
6 infringement lawsuit, including a February 2011 press release which falsely stated that, "with the
7 USPTO's [recent] pronouncement on the '751 patent, Sidense can no longer use patent invalidity
8 as a possible defense [in the patent infringement litigation]," so that this ruling "Strengthens
9 Kilopass' Patent Case; [and] Leaves Sidense Few Options." (emphasis in the original). The press
10 release identifies Nanette Collins and Jonah McLeod as the relevant contacts at Kilopass. In fact,
11 the referenced USPTO ruling was interlocutory and, therefore, does not foreclose SIDENSE from
12 challenging invalidity of the '751 patent in the infringement litigation. The purpose and intent of
13 this false information was to sell Kilopass technology.

14 16. Pursuant to this campaign of false and misleading information, on information and
15 belief, in about February 2011, KILOPASS and CHENG offered to pay Clive Maxfield, editor of
16 the EE Times Programmable Logic Design Line website, to write an article about KILOPASS'
17 patent infringement lawsuit against SIDENSE entitled "STOP! Are You Gambling on Your
18 Memory IP?" in order to make it falsely appear that the information and viewpoints appearing in
19 the article were the independent and unbiased observations of Mr. Maxfield and the EE Times,
20 including that utilizing SIDENSE's technology might "violate [Kilopass'] patents... [and] you
21 might find yourself in court at some stage." This article, which was published in the EE Times on
22 March 3, 2011, included self-serving statements of CHENG, and a section entitled "The Litigation
23 Landscape" which warned that persons who infringe patents could be sued in the United States
24 courts, the ITC, and in the courts of Japan and other foreign countries, and which described
25 litigation in the United States courts and ITC as costing up to \$10 million or more, thereby
26 implying that Mr. Maxfield and EE Times had independently, and without bias, concluded that
27 companies whose products embody SIDENSE's technology could be exposed to costly litigation
28 of that sort. On information and belief, after Mr. Maxfield had written the article, KILOPASS and



1 CHENG reneged on the agreement to pay Mr. Maxfield for writing the article. The purpose and
2 intent of this false information was to sell Kilopass technology.

3 17. Pursuant to this campaign of false and misleading information, in about August
4 2010, KILOPASS and CHENG began contacting SIDENSE customers and potential customers
5 threatening to imminently sue them as patent infringers in Federal District Court (for damages for
6 alleged infringement and an injunction against continued alleged infringement) and/or as
7 respondents in a legal action in the International Trade Commission (to prevent customers, and
8 customers' customers, from shipping their products containing the allegedly infringing technology
9 into the United States) and/or in Japan (for damages for alleged patent infringement and injunction
10 against continued alleged infringement), falsely asserting that its 6,940,751, 6,777,757, and
11 6,856,540 patents were broad enough to cover SIDENSE's 1T-Fuse™ memory products. For
12 example, on information and belief, in December 2010 and February 2011, KILOPASS, through
13 its Vice President Lee Cleveland, told a Sidense customer's customer, that KILOPASS would file
14 an International Trade Commission action against products embodying SIDENSE technology in
15 February 2011. In fact, none of KILOPASS' multiple threats legitimately threatened or resulted in
16 imminent litigation against any SIDENSE customer, potential customer, or any customers'
17 customers or potential customers, for infringement based upon use or potential use of SIDENSE's
18 1T-Fuse™ technology – not in any court, nor in the International Trade Commission. The purpose
19 and intent of this false information was to sell Kilopass technology.

20 18. Pursuant to this campaign of false and misleading information, on information and
21 belief, by at least June 2011, KILOPASS, including through CHENG, had begun falsely telling
22 customers and potential customers that SIDENSE is not financially stable, including but not
23 limited to statements that SIDENSE is no longer commercially viable, that SIDENSE would soon
24 be bankrupt, and that SIDENSE would soon go out of business. For example, on June 28, 2011,
25 KILOPASS sent an e-mail to a number of SIDENSE customers and potential customers
26 characterizing SIDENSE as “start-up with limited income and capital,” while jointly implying that
27 SIDENSE would not be able to adequately indemnify its customers in possible infringement
28 actions brought by KILOPASS. On or about July 19, 2011, CHENG on behalf of Kilopass stated



1 to a SIDENSE customer and licensee that “Sidense is likely to go bankrupt before next year.”
2 Additionally, on at least August 5, 2011, KILOPASS, through CHENG, sent an e-mail to a current
3 SIDENSE customer and licensee in which CHENG cited his “concerns over Sidense viability” as
4 motivation for possible litigation against SIDENSE customers: “Recently, due to concerns over
5 Sidense viability, we have no choice but to turn our attention to the licensees.” In fact, SIDENSE
6 has been financially stable, commercially viable, has not been going bankrupt or going out of
7 business and has recently received \$5.6 million in additional fundraising. The purpose and intent
8 of this false information was to sell Kilopass technology.

9 19. Pursuant to this campaign of false and misleading information, in June 2011,
10 KILOPASS and CHENG began telling customers and potential customers that SIDENSE was
11 refusing to take responsibility for its customers’ allegedly infringing chips and that SIDENSE was
12 telling the Court that its customers, rather than SIDENSE, should be sued for patent infringement.
13 For example, in a mass e-mailing dated June 28, 2011, sent to officers, directors, employees, and
14 attorneys of customers and potential customers, KILOPASS and CHENG said “Sidense has
15 refused to take responsibility for its customers’ chips that contain the embedded Sidense OTP,
16 which stands accused of patent infringement,” and that “Sidense indicat[ed] to the court that it is
17 its licensees who should be charged as direct infringers.” In fact, SIDENSE has never refused to
18 take responsibility for its customers’ allegedly infringing chips, and never said that its customers
19 should be sued for patent infringement or charged as infringers. To the contrary, SIDENSE is
20 vigorously defending KILOPASS’ accusations of patent infringement, including KILOPASS’
21 accusations in the District Court patent litigation that SIDENSE’s customers’ products which
22 embody SIDENSE technology infringe the KILOPASS patents.

23 **FIRST CAUSE OF ACTION**

24 (Defamation)

25 20. SIDENSE realleges and incorporates by reference paragraphs 1 through 19 above
26 as though fully set forth herein.

1 21. At all relevant times alleged herein, all KILOPASS employees were acting in their
2 official capacity as KILOPASS employees and, therefore, their actions are attributable to
3 KILOPASS.

4 22. KILOPASS and CHENG have made false and misleading representations to
5 SIDENSE customers and others including at least: (1) that Sidense's 1T technology is not
6 commercially viable even though Sidense has successfully licensed its technology and taken
7 market share from Kilopass; (2) that the USPTO had invalidated all claims in Sidense's '855
8 patent even though the USPTO never did; (3) that Sidense is licensing technology under the '855
9 patent despite knowing that a substantial portion of the claims in the '855 patent have been
10 rejected even after the USPTO affirmed all claims in the '855 patent and found additional new
11 claims patentable; (4) that Kilopass would imminently file suit against Sidense's customers if they
12 would use, or continue to use, Sidense's technology; (5) that Sidense was not financially stable,
13 not commercially viable, and would soon be bankrupt; and (6) that Sidense has refused to take
14 responsibility for its customers' chips that contain the embedded Sidense OTP in Kilopass' lawsuit
15 against Sidense. These statements have adversely affected SIDENSE's business and reputation
16 and are defamatory without necessity of explanatory matter.

17 23. KILOPASS' and CHENG's statements establish a prima facie case of actionable
18 defamation because they involve SIDENSE's business, were published, were and are false, and
19 were made with the knowledge that they were false, and with spite, hatred, and ill will toward
20 SIDENSE. KILOPASS and CHENG had no reasonable grounds to believe the statements were
21 true, and KILOPASS and CHENG acted with reckless disregard for ascertaining the truth. Thus,
22 KILOPASS' and CHENG's statements are actionable, and actionable per se, and SIDENSE is
23 entitled to damages in an amount to be proven at trial.

24 24. As a proximate result of KILOPASS' and CHENG's defamatory statements,
25 SIDENSE has suffered loss of customers, harm to its reputation, and was exposed to contempt.
26 SIDENSE therefore suffered specific and general damages, including punitive damages, in an
27 amount to be proven at trial.

28 25. As a proximate result of KILOPASS' and CHENG's defamatory statements,



1 SIDENSE has suffered and will continue to suffer irreparable harm unless KILOPASS and
2 CHENG cease making the statements alleged herein. SIDENSE has no adequate remedy at law
3 and is entitled to preliminary and permanent injunctive relief.

4 **SECOND CAUSE OF ACTION**

5 (Federal Unfair Competition False Advertising/Disparagement)

6 (Lanham Act § 43(a); 15 U.S.C. § 1125(a))

7 26. SIDENSE realleges and incorporates by reference paragraphs 1 through 19 above
8 as though fully set forth herein.

9 27. KILOPASS and CHENG have used and continue to use false or misleading
10 representations of facts portraying SIDENSE's products in interstate commerce in promotion of its
11 own products with the intent to materially affect the buying decisions of prospective customers.

12 28. KILOPASS' and CHENG's false advertising and disparagement includes at least:
13 (1) publishing a "White Paper" on www.kilopass.com using an image of Sidense's 1T-Fuse™
14 memory product and claiming the design was disclosed in Kilopass' patents rather than having
15 been independently developed by Sidense; (2) stating on www.kilopass.com that Kilopass
16 invented the split gate design in 2004 to imply that Sidense copied Kilopass' design; (3)
17 distributing a press release via email, on information and belief, to a substantial number of
18 Sidense's customers and potential customers, stating that the USPTO had invalidated all claims in
19 Sidense's '855 patent; (4) distributing a promotional PowerPoint to, on information and belief, a
20 substantial number of Sidense's customers and potential customers stating that SIDENSE
21 continues to offer its 1T intellectual property for license knowing that a substantial portion of its
22 '855 patent claims have been rejected even after the USPTO affirmed all claims in the '855 patent;
23 (5) stating in a press release that the USPTO's interim decision affirming the claims in the '751
24 patent foreclosed SIDENSE from challenging the validity of that patent in defense of KILOPASS'
25 patent infringement lawsuit; and (6) hiring an editor of the EE Times to publish an article, thereby
26 falsely portraying the article as an independent and unbiased discussion of Kilopass' lawsuit.

27 29. On information and belief, KILOPASS' and CHENG's acts alleged herein had a
28 least a tendency to deceive a substantial number of Sidense's customers and potential customers



1 and were material in that they were likely to influence the purchasing decisions of those in the
2 marketplace.

3 30. KILOPASS' and CHENG's conduct complained of herein has caused SIDENSE
4 injury, is malicious, fraudulent, knowing, willful, and deliberate entitling SIDENSE to an
5 accounting of KILOPASS' and CHENG's profits, increased damages, and attorneys' fees and
6 costs incurred in prosecuting this action under 15 U.S.C. § 1117.

7 31. As a proximate result of KILOPASS' and CHENG's false and misleading
8 promotions, SIDENSE has suffered and will continue to suffer irreparable harm unless
9 KILOPASS and CHENG cease making the statements alleged herein. SIDENSE has no adequate
10 remedy at law and is entitled to preliminary and permanent injunctive relief.

11 **THIRD CAUSE OF ACTION**

12 (Intentional Interference With Contractual Relations)

13 32. SIDENSE realleges and incorporates by reference paragraphs 1 through 31 above
14 as though fully set forth herein.

15 33. At all relevant times alleged herein, all KILOPASS employees were acting in their
16 official capacity as KILOPASS employees and, therefore, their actions are attributable to
17 KILOPASS.

18 34. SIDENSE and its customers are parties to End User License Agreements. At all
19 times alleged herein, KILOPASS and CHENG were aware of the End User License Agreements
20 between SIDENSE and its customers and intended by their acts, as alleged in paragraphs 10-19, to
21 interfere with these contractual relationships or make performance under the contracts more
22 difficult.

23 35. On information and belief, as a proximate result of the acts of KILOPASS and
24 CHENG and their agents as alleged herein, performance of these End User License Agreements
25 by SIDENSE's customers has become more difficult and, in certain instances, has ceased
26 completely.

27 36. As a proximate result of KILOPASS' and CHENG's acts alleged herein, SIDENSE
28 has suffered and will continue to suffer irreparable harm unless KILOPASS ceases making the



1 statements alleged herein. SIDENSE has no adequate remedy at law and is entitled to preliminary
2 and permanent injunctive relief.

3 **FOURTH CAUSE OF ACTION**

4 (Intentional Interference With Prospective Economic Advantage)

5 37. SIDENSE realleges and incorporates by reference paragraphs 1 through 31 above
6 as though fully set forth herein.

7 38. At all relevant times alleged herein, all KILOPASS employees were acting in their
8 official capacity as KILOPASS employees and, therefore, their actions are attributable to
9 KILOPASS.

10 39. KILOPASS and CHENG deliberately interfered with SIDENSE's prospective
11 economic advantage. SIDENSE has enjoyed prospective economic relationships with customers
12 and prospective customers that were of substantial economic benefit to SIDENSE. With
13 knowledge of these valuable relationships, KILOPASS' and CHENG's acts, as alleged in
14 paragraphs 10-19 designed to interfere with and disrupt SIDENSE's relationships with existing
15 and prospective customers. KILOPASS' and CHENG's actions were independently wrongful as
16 they violated both Federal and California law as alleged herein.

17 40. KILOPASS and CHENG acted both oppressively and maliciously with intent to
18 cause injury to SIDENSE and with conscious disregard of the rights of others. As such SIDENSE
19 is entitled to exemplary damages, in addition to compensatory damages, as permitted by law.

20 41. As a proximate result of KILOPASS' and CHENG's defamatory statements,
21 SIDENSE has suffered and will continue to suffer irreparable harm unless KILOPASS and
22 CHENG cease making the statements alleged herein. SIDENSE has no adequate remedy at law
23 and is entitled to preliminary and permanent injunctive relief.

24 **FIFTH CAUSE OF ACTION**

25 (Unfair Competition Under California Business and Professions Code § 17200)

26 42. SIDENSE realleges and incorporates by reference paragraphs 1 through 31 above
27 as though fully set forth herein.

28 43. KILOPASS' and CHENG's conduct as alleged herein in paragraphs 10-19



1 constitute “unlawful, unfair, or fraudulent business act[s] or practice[s]” within the meaning of
2 California Business and Professions Code § 17200 *et. seq.*

3 44. As a direct and proximate cause of KILOPASS’ and CHENG’s wrongful conduct,
4 SIDENSE has been and will continue to be harmed and KILOPASS and CHENG have been and
5 will continue to be unjustly enriched.

6 45. As a direct and proximate result of KILOPASS’ and CHENG’s wrongful conduct,
7 SIDENSE is entitled to injunctive relief, restitution, and an order of disgorgement of all of
8 KILOPASS’ and CHENG ill-gotten gains from its unlawful, unfair, or fraudulent business acts or
9 practices.

10
11 **PRAYER FOR RELIEF**

12 SIDENSE prays for judgment as follows:

- 13 1. For judgment that the statements alleged herein are defamatory;
- 14 2. For judgment that KILOPASS and CHENG have engaged in federal and California
15 state unfair competition, including false advertising and disparagement;
- 16 3. For judgment that KILOPASS AND CHENG have engaged in intentional
17 interference in contractual relations and prospective economic advantage;
- 18 4. For judgment that KILOPASS and CHENG are jointly and severally liable for the
19 aforesaid wrongful and unfair acts;
- 20 5. For preliminary and permanent injunctive relief enjoining the aforesaid wrongful
21 and unfair acts by KILOPASS and CHENG, and those persons acting in concert with KILOPASS
22 and CHENG, including related individuals, entities, customers, agents, or representatives pursuant
23 to 15 U.S.C. § 1116 and California Business and Professions Code § 17203;
- 24 6. For SIDENSE’s actual damages sustained as a result of the acts alleged herein,
25 together with prejudgment interest, according to proof;
- 26 7. For an accounting of the profits of KILOPASS and CHENG resulting from its
27 wrongful and unfair acts alleged herein;
- 28 8. For restitution of any profits acquired by means of KILOPASS’ and CHENG’s



1 unfair competition;

2 9. For enhanced damages pursuant to 15 U.S.C. § 1117;

3 10. For punitive damages;

4 11. For an award of attorneys' fees pursuant to 15 U.S.C. § 1117 or as otherwise
5 permitted by law;

6 12. For SIDENSE's costs of suit, including reasonable litigation expenses, pursuant to
7 15 U.S.C. § 1117 or as otherwise permitted by law; and

8 13. For any additional relief the Court deems just and proper.

9
10 DATED: January 26, 2012

Respectfully submitted,

11 KILPATRICK TOWNSEND & STOCKTON LLP

12
13 By: /s/ Roger L. Cook
14 ROGER L. COOK

15 Attorneys for Plaintiff
16 SIDENSE CORP.

DEMAND FOR JURY TRIAL

Plaintiff SIDENSE hereby demands a trial by jury of all issues triable by jury pursuant to Federal Rule of Civil Procedure 38(b) and Civil Local Rule 3-6(a).

DATED: January 26, 2012

Respectfully submitted,

KILPATRICK TOWNSEND & STOCKTON LLP

By: /s/ Roger L. Cook
ROGER L. COOK

Attorneys for Plaintiff
SIDENSE CORP.

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